IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6867 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBICA KELVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR VM PANCHOLI for Respondent No. 1

MR DIPAK DAVE for MR AD OZA for Respondent No. 2

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/05/2000

ORAL JUDGEMENT

1. The petitioner a registered Public Trust by this petition challenges the orders passed by the respondents No.1 and 2 wherein the prayer made for grant of

registration of the school has been declined. In this special civil application notice was issued on 14th July, 1993 and thereafter it was admitted on 13th August, 1993. The respondents No.1 and 3 have not cared to file reply to the special civil application as a result of which whatever averments made by the petitioner in the special civil application stand uncontroverted.

2. The respondent No.2 has filed reply to the special civil application. In reply to the special civil application, the respondent No.2 has stated that the petitioner without recognition of the school started Class VIII from June, 1991 and it has taken the law in own hands and this petition deserves to be dismissed only on this ground. Reference has been made to the provisions of section 31 of the Gujarat Secondary Education Act. It is stated that in view of this illegal act of the petitioner, otherwise also no relief may be granted to it by this court under its extraordinary equitable jurisdiction. On merits, it is stated that after hearing the President and Secretary of the petitioner-Trust the Board has passed the order declining to grant registration/sanction to the school. The petitioner could not establish need of the school in the area as well as for lack of proper facility of the school building and noncooperative attitude of the trust, the registration has not been granted.

3. The petitioner filed an affidavit and in which it has admitted that from 15th June, 1991 it has started one class of Std. VIII in anticipation of the recognition/sanction of the school. However, when the permission was not granted, what the petitioner stated in the affidavit, that this class was discontinued from 11-5-1992 and thereafter no classes are being run by the petitioner.

4. Learned counsel for the petitioner vehemently contended that both the authorities have acted arbitrarily in rejecting the application filed by the petitioner for recognition/sanction of the secondary school. In his submission, it is contended that the grounds given for rejection of the application are arbitrary. Attacking to the order passed by the appellate authority, learned counsel for the petitioner contended that it has also committed serious illegality in passing of the impugned order against the petitioner. All necessary documents were produced before the appellate authority but the appellate authority has not considered the same and in arbitrary manner, the order of the authority below has been confirmed.

5. On the other hand, the counsel for the respondent supports the orders passed by both the authorities.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. It is true that the petitioner started Std. VIII from 15th June, 1991 without there being any recognition or registration of the school. This has been done in anticipation of grant of registration or the sanction of the school and this was later on discontinued from 11-5-1992. This conduct may be very relevant and possibly the relief as prayed for by the petitioner in this court under its extraordinary jurisdiction may not be granted but in view of the order which I propose to pass in this special civil application, I do not consider it to decide this matter finally on this ground at this stage. The averments made by the petitioner in this special civil application that all the documents have been filed before the appellate authority to show the need of the school as well as other requirements of building etc. and those documents have not been considered by the appellate authority have not been controverted by the respondent No.2. As the respondent No.2 has not controverted all the material facts which has been stated by the petitioner, it has to be taken to be uncontroverted and that the relevant documents were produced by the petitioner before the appellate authority and those have not been considered. This is an error apparent on the face of the order of the appellate authority and which cannot be allowed to stand.

8. In the result, this special civil application is allowed and the order of the appellate authority dated 9th February, 1993, annexure `C' is quashed and set aside and the matter is remanded back to the said authority to decide the matter afresh after considering all the documents which have been produced by the petitioner on the record. The appellate authority while considering the appeal afresh of the petitioner, in addition to all other legal requirements to be fulfilled by the trust, praying for grant of registration/sanction of the school, has to further consider that the school has adequate playground facility for games, sports etc. for the students of the school. I have my own experience that in most of the schools, to which recognition is granted by the State, they do not have adequate facilities of playground etc. For school, in addition to other facilities, the need of playground is one of the important matter and if it is not available then it may

not be in the larger interest of the students to grant recognition/sanction to such school. It is also open to the appellate authority to consider whether in view of the conduct of the petitioner that it started Std.VIII classes without permission/sanction or registration, the permission has to be granted or not. Rule is made absolute in the aforesaid terms with no order as to costs.

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